

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09 / PLR-119979-02

Date:

July 29, 2002

### Legend

Taxpayer =

Spouse =

Trust =

Date 1 =

Year 1 =

Year 2 =

Year 3 =

a =

b =

c =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Year 10 =

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Date 2     =  
           d     =  
           e     =  
           f     =  
           g     =  
           h     =  
           i     =  
           j     =  
 Year 11    =  
 Year 12    =  
           k     =  
           l     =  
           m     =  
 Child 1    =  
 Child 2    =  
 Child 3    =  
 Child 4    =

Dear Sir:

This is in response to your letter dated March 28, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) Tax exemption. This letter responds to your request.

The facts and representations submitted are summarized as follows: Taxpayer and Spouse created Trust on Date 1 and funded it with community property cash.

Article I of the trust instrument provides that Trust is irrevocable and that Taxpayer and Spouse do not have the right or power to amend or revoke Trust.

Article III of Trust provides that the trustee is to divide Trust into four equal shares, one each for the benefit of Child 1, Child 2, Child 3, and Child 4. Article III(A)(1)

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provides the trustee with the discretionary authority to pay or apply for the benefit of each living beneficiary net income or principal from the beneficiary's share for the reasonable maintenance of the beneficiary. Any income not distributed is to be added to principal.

Article III(A)(2) provides that, upon the death of a named beneficiary, any remaining principal, not effectively appointed, shall be distributed to the issue of the beneficiary living on the date of the beneficiary's death, by right of representation. If there are no living issue, the share is to be distributed to the then living issue of the Trustors' marriage, by right of representation.

Article III(B) provides a named beneficiary with the limited power to amend or direct distribution of his trust, as of his death, to or for the benefit of ancestors, siblings, or issue of the beneficiary.

Paragraph B of Article III further provides that the named beneficiary shall have the limited power to amend or direct distribution of his trust, during his lifetime or as of his death, by written instrument delivered to the trustee during his lifetime to or for the benefit of any one or more ancestors, siblings, or issue of such beneficiary or the issue of his parents. This limited power shall not under any circumstances be exercisable in favor of such beneficiary, his estate, his creditors, the creditors of his estate, nor for the purpose of discharging any legal obligation of such beneficiary.

Taxpayer made annual gifts of cash to Trust in Year 1 through Year 12. Taxpayer's accountant prepared and Taxpayer timely filed a Form 709, United States Gift (& Generation-Skipping Transfer) Tax Return, for Year 1, Year 2, and Year 3. Taxpayer properly allocated GST exemption to the gifts in the amounts of \$a on his Year 1 gift tax return, \$b on his Year 2 gift tax return, and \$c on his Year 3 gift tax return.

Taxpayer's accountant represents that certain administrative problems in its office caused it to fail to advise Taxpayer to file gift tax returns after Year 3. A letter from the Taxpayer's attorney to the accountants indicates a clear intention that GST exemption be allocated annually to the transfers to Trust. When the error was discovered, Taxpayer filed late gift tax returns for Year 4 through Year 10 on Date 2. No allocations of GST exemption were made on the gift tax returns filed for Year 4 through Year 10. Taxpayer reported gifts to Trust totaling \$d on his Year 4 gift tax return, \$e on his Year 5 gift tax return, \$f on his Year 6 gift tax return, \$g on his Year 7 gift tax return, \$h on his Year 8 gift tax return, \$i on his Year 9 gift tax return, and \$j on his Year 10 gift tax return.

Taxpayer timely filed gift tax returns for Year 11 and Year 12, however, none of Taxpayer's GST exemption was allocated to Taxpayer's gifts to Trust on either return.

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Taxpayer reported gifts to Trust totaling \$k on his Year 11 gift tax return and \$l on his Year 12 gift tax return.

You have requested an extension of time to make allocations totaling \$m with respect to transfers of cash to Trust for Year 4, Year 5, Year 6, Year 7, Year 8, Year 9, Year 10, Year 11, and Year 12.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

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Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted

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an extension of time of 60 days from the date of this letter to file supplemental Forms 709 and Notices of Allocation for Year 4, Year 5, Year 6, Year 7, Year 8, Year 9, Year 10, Year 11, and Year 12 on which Taxpayer will allocate Taxpayer's GST exemption to Trust. The allocation will be effective as of the date of the individual transfers to Trust, and the gift tax value of the transfers to Trust will be used in determining the amount of GST exemption to be allocated to Trust. A copy of this letter should be attached to the supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings it is subject to verification on examination.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea

William P. O'Shea  
Acting Associate Chief Counsel  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)